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CHITRA DEVI SUPPIAH

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ORS

B

HIGH COURT MALAYA, KUALA LUMPUR
SOFIAN ABD RAZAK J
[CRIMINAL APPLICATION NO: 44-95-2010]
15 JULY 2010

C

CRIMINAL PROCEDURE: *Habeas corpus - Application for habeas corpus - Detention of drug dependent - Failure to provide interpreter during inquiry - Whether inquiry report rendered defective - Whether violation of art. 151 Federal Constitution - Whether non-compliance of*
D *s. 6(1)(b) Dangerous Drugs (Special Preventive Measures) Act 1985 - Whether application for habeas corpus allowed - Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, Sch Form 1*

E ***PREVENTIVE DETENTION:*** *Detention order - Validity - Failure to provide interpreter during inquiry - Whether inquiry report rendered defective - Whether violation of art. 151 Federal Constitution - Whether non-compliance of s. 6(1)(b) Dangerous Drugs (Special Preventive Measures) Act 1985 - Whether application for habeas corpus allowed -*
F *Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, Sch Form 1*

CONSTITUTIONAL LAW: *Fundamental liberties - Right of detained person - Right to have interpreter during inquiry - Federal Constitution, art. 151 - Dangerous Drugs (Special Preventive Measures) Act 1985,*
G *s. 6(1) - Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, Sch Form 1*

This was the applicant's application for *habeas corpus* who was detained under a detention order ('DO') pursuant to s. 6(1) of the
H Dangerous Drugs (Special Preventive Measures) Act 1985. The applicant submitted that she was not provided with an interpreter during the inquiry process before her detention. As such, the inquiry report prepared by the inquiry officer for the consideration of the Minister issuing the DO was defective. There was evidence
I that the applicant had, at the earliest opportunity when served with the DO, indicated that she could only converse in Tamil and

required a Tamil interpreter. Although she had been initially provided with one, she was not provided with an interpreter during the inquiry process.

Held (allowing the application):

(1) The fundamental rights of the applicant to converse in Tamil had been violated. The Federal Constitution guaranteed freedom of expression. When the DO had been served on the applicant, its contents, statements, grounds for the DO and the contents of Form 1 of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 had been translated to her in Tamil from the very beginning. The case of *Nagarathinam Vadivaloo v. TMKDNM & 3 Ors* was distinguished as that case showed that Bahasa Malaysia had been initially used and on subsequent occasions. In the instant case, the applicant had made known to the respondent that she could only converse in Tamil. (para 10)

(2) The condition precedent in s. 6(1)(b) of the Act had not been satisfied in that the report of the Inquiry Officer under sub-s. 4 of s. 5 of the Act had been prepared without the benefit of the Tamil interpreter unlike the previous occasion. In all probabilities, the contents of the report were not the right answers to the Inquiry Officer's questions – a clear violation of art. 151 of the Federal Constitution. Further, the Minister would have considered the report not knowing that it had been prepared without the benefit of a Tamil interpreter provided to the applicant, the effect of which rendered the report defective. The consideration of that report under s. 6(1)(b) of the Act was part of the decision making process – a procedural requirement – a breach of which subjected the DO to judicial review. (para 12)

(3) The failure to provide the applicant with a Tamil interpreter was a clear violation of the applicant's right to speak in her mother tongue. Notwithstanding that Bahasa Malaysia was the official language, the freedom of expression accorded to the applicant by the Federal Constitution had to be respected by the respondent. Form 1 of the said 1987 Rules clearly gave the applicant the right to converse in the language she was conversant in, *ie*, Tamil. (para 13)

Case(s) referred to:

L Rajanderan R Letchumanan v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2010] 7 CLJ 653 FC ***(refd)***

Lim Weng Jeng v. TMKDNM & Ors [2009] 1 CLJ 686 ***(refd)***

Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 4 CLJ 613 FC ***(refd)***

Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors [2006] 4 CLJ 687 FC ***(refd)***

Nagarathinam Vadivaloo v. Timbalan Menteri Keselamatan Dalam Negeri Malaysia & Ors (Permohonan Jenayah MT Muar No: 44-29-05) (Unreported) ***(refd)***

Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors v. Arasa Kumaran [2006] 4 CLJ 847 FC ***(refd)***

Legislation referred to;

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 5(4), 6(1)

Federal Constitution, art. 151

For the appellant - Datuk N Sivananthan; M/s Sivananthan
For the respondent - Mohd Azlan Shah Mohd Allias SFC

Reported by Usha Thiagarajah

JUDGMENT

Sofian Abd Razak J:

[1] This is an application (encl. 4) by Chitra Devi a/p Suppiah (hereinafter called 'the applicant') for a writ of *habeas corpus ad subjiciendum*. The applicant is presently detained at the Pusat Pemulihan Akhlak, Batu Gajah Perak by a detention order dated 12 March 2010 issued by the Honourable Deputy Minister of Home Affairs (hereinafter called 'the Honourable Deputy Minister') and made pursuant to s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (hereinafter called 'the Act'). The detention order is for a period of two (2) years commencing 12 March 2010.

[2] The learned counsel for the applicant where appearing before the court had only raised one (1) issue and abandoned the other issues as stated in the affidavit in support (encl. 3). The sole issue was couched in this manner, namely:

[3] It was the contention of the learned counsel that in the Act there are two conditions precedent for the Honourable Minister to consider before making a detention order. These are found in s. 6(1) of the Act which states that:

> 6. Power to order detention and restriction of persons.
>
> (1) Whenever the Minister, after considering:
>
> (a) the complete report of investigation submitted under subsection (3) of section 3 and
>
> (b) the report of the inquiring officer submitted under subsection (4) of section 5,
>
> Is satisfied with respect to any person, that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of the public order that such person be detained by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years.

[4] According to the learned counsel, in the instant case it is evident from exh. CD1, that when Inspector Asfanizairal Shahfry bin Zainoldin served copy of the detention on 12 March 2010 on the applicant, at the column with regard to the contents therein, it was explained to the applicant in Tamil. The said column is hereby produced as follows:

> Isi kandungan butiran (a) hingga (c) dan penerangan yang tersebut di atas telah diterangkan kepada orang tahanan semasa penyampaian dalam bahasa/loghat* Tamil oleh:
>
> Tandatangan t.t.
>
> Nama Jurubahasa Syed Sulaiman bin Syed Mohamed
>
> No: Kad Pengenalan/Kad Kuasa* RF 119126.

[5] The learned counsel further referred to the various affidavits in reply by the respondents to show that in some of the affidavits in reply did mention that whatever was to be explained to the applicant was through a Tamil interpreter. These can be seen from the following affidavits in reply namely:

Afidavit Jawapan (Kandungan 6) by Sarjan Syed Sulaiman bin Syed Mohamed.

4. Saya sesungguhnya menyatakan bahawa saya fasih berbahasa TAMIL. Saya juga ingin menyatakan bahawa sejak saya bertugas di Bahagian Siasatan Jenayah Narkotik, Ibu Pejabat Polis Dang Wangi, Kuala Lumpur dan sejak itu *saya telah banyak kali menjalankan tugas-tugas terjemahan dari Bahasa Malaysia ke dalam Bahasa Tamil dan dari Bahasa Tamil ke dalam Bahasa Malaysia ke atas Orang-Orang Tahanan apabila diarah oleh Pegawai Atasan saya.* (emphasis added).

5. Pada 12.3.2010 jam 9.30 malam, saya telah diarahkan oleh Insp. Asfanizairal Shafry bin Zainoldin untuk menterjemahkan ekshibit 'ASZ-1', 'ASZ-2' dan Borang 1 kepada Pemohon dari Bahasa Malaysia ke dalam Bahasa Tamil yang difahami oleh Pemohon. Sebelum penterjemahkan dilakukan, Insp. Asfanizairal Shahfry bin Zainoldin telah mengarahkan saya berbual-bual dahulu dengan Pemohon di dalam Bahasa Tamil yang mudah difahami untuk mempastikan sama ada Pemohon faham atau tidak Bahasa Tamil. Pemohon maklumkan bahawa Pemohon faham Bahasa Tamil. *Setelah saya berpuas hati Pemohon faham, saya telah menterjemahkan segala isi kandungan ekshibit 'ASZ-1', 'ASZ-2' dan Borang 1 didalam Bahasa Tamil yang mudah difahami kepada Pemohon.* Saya juga telah memaklumkan hak Pemohon untuk membuat representasi (rayuan) dan hak untuk mendapatkan khidmat Peguam. Pemohon mengaku memahami apa yang diberitahu, diterangkan dan dimaklumkan kepadanya.

Afidavit Jawapan (Kandungan 8) by Inspektor Polis Asfanizairal Shahfry bin Zainoldin

7. Sebelum penyerahan ekshibit "ASZ-1" saya telah menerangkan isi kandungan ekshibit "ASZ-1" kepada Pemohon dalam Bahasa Malaysia yang mudah difahami dan seterusnya Sjn. Syed Sulaiman bin Syed Mohamed telah menterjemahkan ekshibit "ASZ-1" dalam Bahasa Tamil yang difahami oleh Pemohon. Untuk mempastikan Pemohon faham, saya telah memngarahkan Sjn. Syed Sulaiman bin Syed Mohamed berbual-bual dahulu dengan Pemohon di dalam Bahasa Tamil yang beliau fahami. Ekoran daripada itu, saya telah difahamkan oleh Sjn Syed Sulaiman bin Syed Mohamed bahawa Pemohon faham Bahasa Tamil. *Kemudian semua penerangan-penerangan tersebut telah diterjermahkan dalam Bahasa Tamil oleh Sjn Syed Sulaiman bin Syed Mohamaed. Pemohon telah mengaku memahami isi kandungan ekshibit "ASZ-1"* Saya juga telah menyampaikan 3 salinan Borang 1 kepada Pemohon bagi membolehkan Pemohon mengemukakan representasi (rayuan) terhadap Perintah Tahanan kepada Lembaga Penasihat. Kandungan

Borang 1 tersebut telah juga diterangkan kepada Pemohon di dalam Bahasa Malaysia yang mudah difahami. *Kemudian, semua penerangan-penerangan mengenai Borang 1 tersebut telah diterjemahkan dalam Bahasa Tamil oleh Syed Sulaiman bin Syed Mohamed.*

[6] The learned counsel referred only to two (2) of the enclosures to show that the applicant had at the earliest opportunity indicated that she could only converse in Tamil and required a Tamil interpreter. A Tamil interpreter was indeed provided. There were many other instances in the affidavit in reply which I do not intend to reproduce them here save and except to say that the deponents therein have clearly shown that whatever was to be explained to the applicant was interpreted to her in Tamil. These could be found in encl. 11 at para. 8 encl. 12 at para. 6, encl. 13 at paras. 5 and 6, encl. 16 at para. 7 and lastly in encl. 17 at paras. 4, 5 and 6.

[7] The learned counsel submitted that most crucial of all was the report prepared by the Inquiry Officer where it was alleged by the applicant in her affidavit affirmed on 16 June 2010 (encl. 23) that on 2 March 2010 when she attended the inquiry, the applicant told the Inquiry Officer that she required a Tamil interpreter because she was not conversant in Bahasa Malaysia. Throughout the inquiry process no Tamil interpreter was provided to her. It was argued that if the detention order was issued by the Honourable Minister upon consideration of the report of the Inquiry Officer, it was not prepared in accordance with sub-s. 4 of s. 5 of the Act, in that it was prepared without the benefit of a Tamil interpreter, then the pre-condition as imposed in s. 6(1) of the Act had not been met. It tantamounts to procedural non-compliance which goes to the root of the matter.

[8] The Inquiry Officer in her affidavit in reply (encl. 24) affirmed on 28 June 2010 stated at para. 5 that she had asked the applicant whether the applicant could understand Bahasa Malaysia. It was alleged that the applicant did not require a Tamil interpreter and the allegation that the applicant was not conversant in Bahasa Malaysia was without any basis.

[9] The learned federal counsel for the respondents in reply submitted that the inquiry officer in reference to encl. 24 at paras. 4 and 5 had conversed with the applicant in simple and easily understood Bahasa Malaysia and there was no reason for the

applicant not to understand simple Bahasa Malaysia. The learned federal counsel cited the case of *Nagarathinam a/l Vadivaloo v. TMKDNM & 3 Others* (Permohonan Jenayah MT Muar No: 44-29-05).

Finding Of The Court

[10] The court was of the view that in the instant case the fundamental rights of the applicant to converse in Tamil has been violated. The Federal Constitution guarantees freedom of expression. It was quite clear that in the instant case the applicant had at the earliest opportunity when the detention order was served on her by Inspector Asfanizairal Shahfry bin Zainoldin, it was translated to her in the language understood by her which was Tamil. The contents of the said order, the statements and grounds for the said order and the contents of *Borang 1* (Form 1 of Schedule to Dangerous Drugs (Special Preventive Measures) Advisory Board Procedure) Rules 1987) were translated to her by the Tamil interpreter, Syed Sulaiman bin Syed Mohamed (see exh. 'CD1'). The court was of the view that the case cited by the learned federal counsel, namely *Nagarathinam a/l Vadivaloo v. TMKDNM & 3 Others (supra)* could be distinguished on the facts and did not apply to the facts of the instant case. In *Nagarathinam a/l Vadivaloo (supra)* where the brief facts is quoted *in extenso* as follows, namely:

> It was submitted that the detention order and the allegations of facts were not explained in the languages understood by the applicant, ie Tamil or English. It was explained in simple Bahasa Malaysia. Article 151(1) of the Federal Constitution requires it to be explained. Mr. Najib Zakaria for the Respondents contended that there is no procedural requirement for any explanation to be given in Tamil or English. "In *Chan Ng v. Menteri Hal Ehwal Dalam Negeri Malaysia & 2 Ors* [1995] 2 CLJ 795, it was held by Mohd Ghazali Yusoff JC (as he then was) that the court could presume that the applicant by virtue of his age and occupation could understand Bahasa Malaysia.
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> Article 151(1)(a) of the Federal Constitution provides that where any law or ordinance made or promulgated provides for preventive detention, "the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and subject to clause (3), the allegations of fact on which the order is based, and shall give him

the opportunity of making representations against the order as soon as may be" Article 151(1)(a) clearly provides that the detaining authority shall inform the detenu of the grounds for his detention and subject to clause (3), the allegations of fact on which the order is based ... However, "inform" does not mean that that technical or precise language need be used." The matter is a matter of substance, and it turns on the elementary proposition that in this country a person is, *prima facie*, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed" ... Indeed in *Chong Kim Loy v. TMDNM & Anor* [1990] 1 CLJ (Rep) 731; [1990] 1 CLJ 61, which concerned a detention order made under the same said section 6(1), it was held by Edgar Joseph Jr J (as he then was) that the detention order should inform the detenu "in general terms, of the reasons for his detention so as to enable him to exercise, as soon as reasonably possible, his right to make representation to an advisory board under section 9(1)".

And in the instant case, the detaining authority had undoubtedly disclosed the grounds for his detention and the allegations of fact on which the order of detention was based to the applicant. The detaining authority, through the police officer serving the detention order on the applicant, had also read in simple Bahasa Malaysia to the applicant, the contents of the detention order and the allegations of fact and that after that police officer had first ascertained that the applicant understood Bahasa Malaysia. Given so, it must reasonably appear that the detaining authority had not fallen short of its duty to inform the applicant of the grounds for his detention and of the allegations of fact. The applicant affirmed that he could not understand nor speak Bahasa Malaysia.

The applicant is by his own admission, a citizen of Malaysia where Bahasa Malaysia, apart from the fact that it is the official language, is the *lingua franca*. The applicant is holder of identity card number 811121-06-5863. Which first 6 digits reveal that the applicant is within that age as to have received some from formal instruction in Bahasa Malaysia. It must stand to reason that the applicant could surely speak and understand simple Bahasa Malaysia. Indeed, it would have been within reason for the officer serving the detention order to first ascertain that the applicant understood Bahasa Malaysia before she proceeded to read in simple Bahasa Malaysia to the applicant the contents of the detention order and the allegations of fact ..." All said and done, there was no reason for that police officer not to use simple Bahasa Malaysia. On the contrary, simple Bahasa Malaysia would

A suffice to serve the purpose. There was no reason for that police officer to require the intervention of an interpreter. On the facts, it would only appear that the detaining authority had duly informed and effectively conveyed to the applicant, the grounds for his detention and the allegations of facts.

B **[11]** The facts of *Nagarathinam a/l Vadivaloo (supra)* as cited by the learned federal counsel showed that Bahasa Malaysia had been used at the earliest opportunity by the respondent and on subsequent occasions. In the instant case the facts showed that the applicant had made known to the respondent that she could
C only converse in Tamil and that was why when the detention order was served and the reasons for the detention and the contents of Borang 1 were all interpreted in Tamil by the interpreter.

D **[12]** In the case of *L Rajanderan R Letchumanan v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 7 CLJ 653, the Federal Court reaffirmed its earlier decisions in *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 4 CLJ 613; *Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors*
E *v. Arasa Kumaran* [2006] 4 CLJ 847; *Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 4 CLJ 687 and *Lim Weng Jeng v. Timbalan Menteri Keselamatan Dalam Negeri Malaysia & Ors* [2009] 1 CLJ 686. I find that in the instant case the condition precedent as envisaged in s. 6(1)(b)
F of the Act had not been satisfied in that the report of the Inquiry Officer submitting under sub-s. (4) of s. 5 was prepared without the benefit of the Tamil interpreter being provided to the applicant as it was done on the previous occasion. So the contents of the report by the Inquiry Officer may not be what might be the
G answer to the Inquiry Officer's question. This was clearly a violation of art. 151 of the Federal Constitution. The upshot was that the Honourable Minister when considering the report from the Inquiry Officer, would not know that the contents of the report was prepared without the benefit of the applicant being
H provided with a Tamil interpreter and that would make the report defective. The effect of this was, it tantamounts to non-compliance and by the same course of reasoning of the Federal Court in Mohd Faizal is to invalidate the detention order made by the Honourable Minister. This was because the consideration of that
I report under s. 6(1)(b) of the Act was part of the decision making process, ie, a procedural requirement, a breach of which will subject the order of the Honourable Minister to judicial review.

[13] Reverting to the facts of the instant case, I hold that the report of the Inquiry Officer prepared was not in compliance pursuant to s. 6(1)(b) of the Act as it was prepared without the benefit of a Tamil interpreter. The failure to provide a Tamil interpreter to the applicant was clearly a violation of his rights to speak in her mother tongue, no doubt a Malaysian. It was not about Bahasa Malaysia being the *lingua franca* being the official language but it was about the freedom of expression accorded to her by the Constitution which had to be respected by the respondent. The *Borang 1* clearly gave her that right to converse in the language she felt conversant with which was Tamil. The facts of *Nagarathinam a/l Vadivaloo (supra)* is distinguishable and not applicable. I therefore allowed the applicant's application for a writ of *habeas corpus*.